IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Notice of Motion NO.97 of 2005

In

Petition NO.561 of 2005

Gerald Days .. Deceased

Anib Anthony D/Monte ..Petitioner

Mr.D.H.Mehta with D.A.Joseph i/b M/d Davidm and Associates for Petitioner

Mr.DSinesh J. Haldankar for Respondent no.9

CORAM:A.S.AGUIAR,J.

DATED:2nd Sept. 2005

P.C.:-

1. Heard learned Advocates for both sides.

2. The Petitioner is seeking urgent relief in terms of prayer clause (b) of Notice of Motion NO.120 of 2005. The relief sought in the motion against Respondent no.1 who has taken out execution proceedings in respect of decree dated 30-4-1997 passed by the City Civil Court in S.C.Suit

No.955 of 1982. The decree was challenged in the High Court. The Appeal is dismissed. The matter was also taken up before the Hon'ble Supreme Court, the SLP has also been dismissed.

3. The learned Advocate for the Petitioner points out that this court while rejecting the appeal had noted the existence of the Will of 1973 and further noted that no probate proceedings were initiated by the Appellant Petitioner herein and therefore the Court refused to look into the same. Under the said Will property has been bequeathed to the present Petitioner. Though the Notice of Motion was taken out in the month of August 2005 the Petitioner has belatedly moved for urgent reliefs in view of the proceedings now adopted by the Respondent for taking possession of the premises.

4. In view of the pendency of petition for probate in respect of Will the existence of which was noted by this Court in its order dated 8-4-2005, Notice of Motion is made absolute in terms of prayer clause (b).

5. Notice of Motion disposed of.

(A.S.AGUIAR, J.)